

Applicant : Robert A. Kerr II
Appl. No. : 10/636,164
Examiner : John A. Jeffery
Docket No. : 13357.4002

Remarks

Claims 1-7, 9-10, 21-31, 39, and 42-87 are currently pending in this application. Claims 8, 11-20, 32-38, and 40-41 have been canceled. Claims 1, 7, 9, and 24-26 have been amended. Claims 43-87 have been added.

Applicant has canceled claims 11-20, 32-38 and 40-41, without prejudice to Applicants' pursuit of the subject matter of these claims in a future application, since these claims were withdrawn from consideration by the Examiner as being directed to non-elected species. Applicant has canceled claim 8 to more clearly present the remaining claims for allowance.

Applicant has amended paragraph [0026] of the specification to address the Examiner's objection regarding use of the Bluetooth™ trademark. Claim 19 has been canceled as noted above, thus the Examiner's objection to claim 19 has been rendered moot.

Applicant has rewritten dependent claims 2, 3, 25, and 26 as new independent claims 43, 54, 65, and 73. New claim 43 includes all of the limitations of as-filed claims 1 and 2. New claim 54 includes all of the limitations of as-filed claims 1 and 3. New claim 65 includes all of the limitations of as-filed claims 24 and 25. New claim 73 includes all of the limitations of as-filed claims 24 and 26. Accordingly, claims 43, 54, 65 and 73, as well as the claims 44-53, 55-64, 66-72, 80, 86 and 87, which depend from these claims, are in condition for allowance, which is respectfully requested.

Claims 1, 4-10, 21-24, 27-31, 39 and 42 stand rejected under the judicially created doctrine of obviousness-type double patenting, over claims 1-21 of US Patent No. 6,612,984. Applicant submits herewith a terminal disclaimer in compliance with 37 CFR 1.32(c) to overcome this rejection.

Claims 1, 4-10, 21-24, 27-31, 39 and 42 also stand rejected under 35 USC 103(a) over WO98/59487 in view of Peifer et al (US 5987519), with claim 39 being rejected in further view of Heinonen (US6421633).

Applicant	:	Robert A. Kerr II
Appl. No.	:	10/636,164
Examiner	:	John A. Jeffery
Docket No.	:	13357.4002

WO98/59487 discloses a system including a measuring device 10, an adaptor 400, and a computer 30 which is connected to the Internet. See e.g. FIG. 1A. The computer 30 of WO98/59487 executes standard web-browser software to connect to the Internet. See pg. 4, line 32 – pg. 5, line 7. The web-browser software installed on the computer 30 receives the data from the adapter 400, into a front-end home page running on the computer 30. See pg. 5, lines 19-36. The web browser transmits the received medical data to a physician's computer when the user clicks on a link in the front-end home page on the user's web browser. See pg. 6, lines 2-4 ("By clicking on the link the results of a medical measurement is transmitted over the internet to the physician's computer 34"). When the data is received at the physician's office, an "acknowledge" signal is generated, which is sent back to the computer. The "acknowledge" signal must be provided back to the device by the user, since the Java applet used by WO98/59487 cannot communicate with the device itself. See pg. 11, line 33 – pg. 12, line 2. The web browser can also include other features such as a formatted display of the medical device output parameters, which the user accesses by operating the mouse and keyboard of the computer, and software buttons that allow the user to control the medical device. See pg. 8, line 35 – pg. 9, line 10. To access all of these features, the user logs into the computer using a password. See pg. 9, lines 21-25.

All of this functionality taught by WO98/59487 requires the user to be able to understand and operate a personal computer. Furthermore, the user is required to perform additional actions, using his computer, in order for the system taught by WO98/59487 to function. For example, the user has to configure his computer to connect to the Internet. The user has to launch the web browser application on his computer before the communications can be sent from the measuring device to the physician's computer. The user has to click on a link in the web browser in order for the information to be sent. The user has to somehow tell the medical device that the "acknowledge" signal was sent back by the physician's computer. Fundamentally, the system of WO98/59487 requires that the user be technologically savvy enough to operate a personal computer.

Many users of measuring devices, such as elderly or infirm patients, are not capable of operating personal computers in an error-free manner, however. Thus the system of

Applicant : Robert A. Kerr II
Appl. No. : 10/636,164
Examiner : John A. Jeffery
Docket No. : 13357.4002

WO98/59487 suffers from the same drawbacks as the conventional systems identified by the Applicant. See Kerr application, paragraph [0005]. The systems and methods of claims 1, 4-10, 21-24, 27-31, 39 and 42 as amended, however, recite, *inter alia*, a system “wherein the integration system and communications system are pre-configured such that user operation of the measuring device causes the integration system to acquire and convert the first signal and the communications system to transmit the second signal to the remote system without further action by the user,” and a method “wherein the measuring step causes the acquiring, converting and transmitting steps without further action by the user.” Thus the claimed inventions do not require the user to configure a computer, to launch a web-browser, to click on a link on a web page, to inform the medical device of any “acknowledge” signals, nor any of the other additional actions required by the system of WO98/59487. Instead, the user merely operates the measuring device in the usual manner, and the data is automatically transmitted to the remote system without further action by the user.

By teaching that a personal computer is a necessary component to the data transfer system of WO98/59487, and by teaching that the user must manipulate a personal computer and perform additional steps over and above the normal operation of the measuring device, this reference teaches away from the claimed data transfer system, and thus fails to teach, suggest, anticipate or render obvious the inventions of claims 1 and 24, as well as the claims which depend from claims 1 and 24, whether read alone or in combination with the other references cited by the Examiner. Accordingly, Applicants respectfully request that the Examiner withdraw the rejections of claims 1, 4-10, 21-24, 27-31, 39 and 42, and allow these claims to issue.

Applicant : Robert A. Kerr II
Appl. No. : 10/636,164
Examiner : John A. Jeffery
Docket No. : 13357.4002

Conclusion

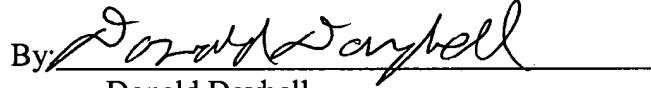
Prompt and favorable action on the merits of the claims is earnestly solicited. Should the Examiner have any questions or comments, the undersigned can be reached at (949) 567-6700.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 15-0665.

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

Dated: January 24, 2005

By: 
Donald Daybell
Reg. No. 50,877

Orrick, Herrington & Sutcliffe LLP
4 Park Plaza, Suite 1600
Irvine, CA 92614-2558
Tel. 949-567-6700
Fax: 949-567-6710